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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,708	07/22/2003	Richard Brussel	017399-0211	4928
22428	7590	06/20/2006	EXAMINER	
FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			NICHOLSON III, LESLIE AUGUST	
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DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/623,708	Applicant(s) BRUSSEL, RICHARD	
	Examiner Leslie A. Nicholson III	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments and Amendments

1. Due to Applicant's amendments, all objections to the specification and drawings are hereby withdrawn.

Due to Applicant's amendments and/or explanation, all 35 USC 112 1st and 2nd paragraph rejections are hereby withdrawn.

Reference EP 0-450-482 has been considered and a copy of the initialed IDS is attached hereto.

In response to Applicant's arguments regarding "resilient", the Examiner points out that the term is defined as having the capability of returning to an original shape or position, as after having been compressed, or having the ability to recover readily. Any metallic material has this property as does most other materials, excluding ceramics, for example. Yamazaki (or any other reference) does not need to expressly disclose material being resilient. It is inherent to one having ordinary skill in the art.

Applicant's arguments with respect to claims 1,2,4,5, (Yamazaki in view of Mueller) and therefore claims 6-12, have been fully considered but they are not persuasive. First, there is teaching in the prior art to combine the teachings of Yamazaki and Mueller. The teaching was referenced in C1/L6-18 and C4/L30-32 of Mueller clearly shown on page 6 of the First Action. Second, the device of Yamazaki and Mueller are in the same field of endeavor, which is for picking up products. Mueller was used only to teach a conveyor belt rather than the rollers in the device of Yamazaki.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (claim 3), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Objections

2. Claim 17 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

The apparatus claimed in claim 2 is for "an apparatus for picking up a tacky plastic product". A molding press is external to this device and does not further limit the claim.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This claim is recited as though the plastic products are tacky, while this has not been positively recited. Since claim 1 now simply recites the handling of a plastic product, where does the plastic residue come from? Second, what is a divided stroke? The carrier plates moving away from one another transversely? If so, how are they cleaned this way? Even after referring to the specification, this claim is too broad to properly examine.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1,2,4,5, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki USP 6,074,163 in view of Mueller USP 6,209,710.

Regarding claim 1, Yamazaki discloses a similar method comprising setting down on longitudinal margins of the conveyor one or more resilient carrier plates (4), and picking up the product by the one or more carrier plate(s) (4) by slipping carrier plate(s) between the product and a surface of the conveyor (fig.8,9,10). Yamazaki does not expressly disclose the conveyor having a belt or the products being plastic products.

Mueller teaches the conveyance of plastic products by way of a conveyor belt for the purpose of smoothly conveying the plastic products from one point to another (C1/L6-18; C4/L30-32).

At the time of invention it would have been obvious to one having ordinary skill in the art to employ a conveyor belt to convey plastic products, as taught by Mueller, in the method of Yamazaki, for the purpose of conveying the plastic products from one station to another.

Regarding claim 2, Yamazaki discloses the apparatus comprising transversely driven resilient carrier plates (4) adapted to slip under and lift the plastic product by its lateral margins and thereby pick it up (fig.8,9,10).

Regarding claim 4, Yamazaki discloses the apparatus further comprising a lifting drive on a lifting spindle (5) adapted to resiliently urge the carrier plates against the surface of the conveyor belt, for insertion underneath the plastic product and a cross rail (7) on which the carrier plates are adapted to be driven toward a longitudinal central axis (fig.2,7-10).

Regarding claim 5, Yamazaki discloses the apparatus characterized by a slanting application of the carrier plates to cross travel drives (fig.3,7).

Regarding claim 14, the device of Yamazaki is fully capable of picking up a tacky plastic product.

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7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki USP 6,074,163 in view of Mueller USP 6,209,710 further in view of Miles USP 5,247,761.

Yamazaki discloses all the limitations of the claim, but does not expressly disclose the carrier plates made from spring steel.

Miles teaches carrier plates made from spring steel for the purpose of providing the plates with a material having some resilience and flexibility while permitting adequate gripping force (C5/L52-55).

At the time of invention it would have been obvious to one having ordinary skill in the art to employ carrier plates made from spring steel, as taught by Miles, in the apparatus of Yamazaki, for the purpose of providing the plates with a material having some resilience and flexibility while permitting adequate gripping force.

8. Claims 6,8, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki USP 6,074,163 in view of Mueller USP 6,209,710 further in view of Cohen USP 6,332,636.

Regarding claim 6, Yamazaki discloses all the limitations of the claim, but does not expressly disclose the apparatus further comprising a device for cleaning the carrier plates attached in an area of the cross travel drives.

Cohen teaches a device for cleaning the carrier plates attached in an area of the cross travel drives (C19/L23-26) for the purpose of removing foreign matter that can contaminate a conveyed product.

At the time of invention it would have been obvious to one having ordinary skill in the art to employ a device for cleaning the carrier plates attached in an area of the cross travel drives, as taught by Cohen, in the device of Yamazaki, for the purpose of removing foreign matter that can contaminate a conveyed product.

Regarding claims 8 and 16, Yamazaki discloses all the limitations of the claim, but does not expressly disclose the apparatus further comprising a cleaning device, in which adapted to engage with and clean the carrier plates cyclically or after x-cycles.

Cohen teaches a cleaning device, in which adapted to engage with and clean the carrier plates cyclically or after x-cycles (C19/L23-26) for the purpose of removing foreign matter that can contaminate a conveyed product.

At the time of invention it would have been obvious to one having ordinary skill in the art to employ a cleaning device, in which adapted to engage with and clean the carrier plates cyclically or after x-cycles, as taught by Cohen, in the device of Yamazaki, for the purpose of removing foreign matter that can contaminate a conveyed product.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki USP 6,074,163 in view of Yamazaki USP 6,074,163 in view of Mueller USP 6,209,710 further in view of McGill USP 4,183,428.

Yamazaki discloses all the limitations of the claim, but does not expressly disclose the apparatus characterized in that a drive transports the plastic on a track.

McGill teaches the apparatus characterized in that a drive transports the plastic on a track (16) (fig.1) for the purpose of moving the products through a fixed course extending longitudinally of the apparatus (C2/L45-49).

At the time of invention it would have been obvious to one having ordinary skill in the art to employ a drive to transport the plastic on a track, as taught by McGill, in the device of Yamazaki, for the purpose of moving the products through a fixed course extending longitudinally of the apparatus.

10. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki USP 6,074,163 in view of Mueller USP 6,209,710 further in view of Dischler USP 6,279,211.

Regarding claim 9, Yamazaki discloses all the limitations of the claim, but does not expressly disclose bearing surfaces of the carrier plates and/or of the conveyor belt have a parting coat.

Dischler teaches bearing surfaces of the carrier plates and/or of the conveyor belt have a parting coat for the purpose of reducing friction and heating (C2/L53-63).

At the time of invention it would have been obvious to one having ordinary skill in the art to having a parting coat on the bearing surfaces of the carrier plates and/or of the conveyor belt, as taught by Dischler, in the device of Yamazaki, for the purpose of reducing friction and heating.

Regarding claim 10, Yamazaki discloses all the limitations of the claim, but does not expressly disclose treating bearing surfaces of the carrier plates and/or of the conveyor belt repeatedly with talc.

Dischler teaches treating bearing surfaces of the carrier plates and/or of the conveyor belt repeatedly with talc for the purpose of reducing friction and heating (C2/L53-63).

At the time of invention it would have been obvious to one having ordinary skill in the art to treat bearing surfaces of the carrier plates and/or of the conveyor belt repeatedly with talc, as taught by Dischler, in the method of Yamazaki, for the purpose of reducing friction and heating.

Regarding claim 11, Yamazaki discloses all the limitations of the claim, but does not expressly disclose the apparatus further comprising a roller coating unit adapted to coat the conveyor belt with a parting agent in a return run of the conveyor belt.

Dischler teaches a roller coating unit adapted to coat the conveyor belt with a parting agent in a return run of the conveyor belt for the purpose of reducing friction and heating (C2/L53-63).

At the time of invention it would have been obvious to one having ordinary skill in the art to a roller coating unit adapted to coat the conveyor belt with a parting agent in a return run of the conveyor belt, as taught by Dischler, in the device of Yamazaki, for the purpose of reducing friction and heating.

Regarding claim 12, Yamazaki discloses all the limitations of the claim, but does not expressly disclose the method further comprising treating bearing surfaces of the carrier plates and/or of the conveyor belt with talc cyclically or after x-cycles.

Dischler teaches a method of treating bearing surfaces of the carrier plates and/or of the conveyor belt with talc cyclically or after x-cycles for the purpose of reducing friction and heating (C2/L53-63).

At the time of invention it would have been obvious to one having ordinary skill in the art to treat bearing surfaces of the carrier plates and/or of the conveyor belt with talc cyclically or after x-cycles, as taught by Dischler, in the method of Yamazaki, for the purpose of reducing friction and heating.

11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki USP 6,074,163 in view of Palmers USP 5,088,592.

Yamazaki discloses all the limitations of the claim, but does not expressly disclose the device further comprising a molding press.

Palmers teaches the use of a molding press (23) for the purpose of molding material to a desired shape.

At the time of invention it would have been obvious to one having ordinary skill in the art to employ a molding press, as taught by Palmers, in the device of Yamazaki, for the purpose of molding material to a desired shape.

Allowable Subject Matter

12. Claim 13 is allowed.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie A. Nicholson III whose telephone number is 571-272-5487. The examiner can normally be reached on M-F, 8:30 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on 571-272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

L.N.
6/15/2006


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